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SENATE BILL 137

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gerald P. Ortiz y Pino

FOR THE WELFARE REFORM OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC ASSISTANCE; EXCLUDING THE INCOME OF A LEGAL
GUARDIAN IN AN ELIGIBILITY DETERMINATION FOR THE NEW MEXICO
WORKS AND EDUCATION WORKS PROGRAMS; ALLOWING THE HUMAN SERVICES
DEPARTMENT SOME FLEXIBILITY IN DETERMINING ELIGIBILITY;
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN
LAWS 2007.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 27-2B-1 NMSA 1978 (being Laws 1998,
Chapter 8, Section 1 and Laws 1998, Chapter 9, Section 1) is
amended to read:

"27-2B-1. SHORT TITLE.--~~[Sections 1 through 20 of this
act]~~ Chapter 27, Article 2B NMSA 1978 may be cited as the "New
Mexico Works Act"."

Section 2. Section 27-2B-3 NMSA 1978 (being Laws 1998,

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1 Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3, as
2 amended) is amended to read:

3 "27-2B-3. DEFINITIONS.--As used in the New Mexico Works
4 Act:

5 A. "applicant" means a person applying for cash
6 assistance on behalf of a benefit group;

7 B. "benefit group" means a pregnant woman or a
8 group of people that includes a dependent child, all of that
9 dependent child's full, half or adopted siblings or
10 stepsiblings living with the dependent child's parent or
11 relative within the fifth degree of consanguinity and the
12 parent with whom the children live;

13 C. "cash assistance" means cash payments funded by
14 the temporary assistance for needy families block grant
15 pursuant to the federal act and by state funds;

16 D. "department" means the human services
17 department;

18 E. "dependent child" means a natural child, adopted
19 child, stepchild or ward who is:

20 (1) seventeen years of age or younger;

21 (2) eighteen years of age and is enrolled in
22 high school; or

23 (3) between eighteen and twenty-two years of
24 age and is receiving special education services regulated by
25 the public education department;

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1 F. "director" means the director of the income
2 support division of the department;

3 G. "earned income" means cash or payment in kind
4 that is received as wages from employment or payment in lieu of
5 wages; and earnings from self-employment or earnings acquired
6 from the direct provision of services, goods or property,
7 production of goods, management of property or supervision of
8 services;

9 H. "federal act" means the federal Social Security
10 Act and rules promulgated pursuant to the Social Security Act;

11 I. "federal poverty guidelines" means the level of
12 income defining poverty by family size published annually in
13 the federal register by the United States department of health
14 and human services;

15 J. "immigrant" means alien as defined in the
16 federal act;

17 K. "parent" means natural parent, adoptive parent
18 or stepparent [~~or legal guardian~~];

19 L. "participant" means a recipient of cash
20 assistance or services or a member of a benefit group who has
21 reached the age of majority;

22 M. "person" means an individual;

23 N. "secretary" means the secretary of the
24 department;

25 O. "services" means child care assistance; payment

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1 for employment-related transportation costs; job search
2 assistance; employment counseling; employment, education and
3 job training placement; one-time payment for necessary
4 employment-related costs; case management; or other activities
5 whose purpose is to assist transition into employment;

6 P. "unearned income" means old age, survivors and
7 disability insurance; railroad retirement benefits; veterans
8 administration compensation or pension; military retirement;
9 pensions, annuities and retirement benefits; lodge or fraternal
10 benefits; shared shelter payments; settlement payments;
11 individual Indian money; child support; unemployment
12 compensation benefits; union benefits paid in cash; gifts and
13 contributions; and real property income;

14 Q. "vehicle" means a conveyance for the
15 transporting of individuals to or from employment, for the
16 activities of daily living or for the transportation of goods;
17 "vehicle" does not include any boat, trailer or mobile home
18 used as a principal place of residence; and

19 R. "vocational education" means an organized
20 educational program that is directly related to the preparation
21 of a person for employment in a current or emerging occupation
22 requiring training other than a baccalaureate or advanced
23 degree. Vocational education must be provided by an
24 educational or a training organization, such as a vocational-
25 technical school, community college, post-secondary educational

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1 institution or proprietary school."

2 Section 3. Section 27-2B-7 NMSA 1978 (being Laws 1998,
3 Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as
4 amended by Laws 2007, Chapter 349, Section 14 and by Laws 2007,
5 Chapter 350, Section 5) is amended to read:

6 "27-2B-7. FINANCIAL STANDARD OF NEED.--

7 A. The secretary shall adopt a financial standard
8 of need based upon the availability of federal and state funds
9 and based upon appropriations by the legislature of the
10 available federal temporary assistance for needy families grant
11 made pursuant to the federal act in the following categories:

- 12 (1) cash assistance;
- 13 (2) child care services;
- 14 (3) other services; and
- 15 (4) administrative costs.

16 The legislature shall determine the actual percentage of
17 each category to be used annually of the federal temporary
18 assistance for needy families grant made pursuant to the
19 federal act. Within the New Mexico works program, the
20 department may provide cash assistance or services to specific
21 categories of benefit groups from general funds appropriated to
22 cash assistance or services. The department may exclude these
23 funds from temporary assistance for needy families maintenance
24 of effort. The department shall identify alternative state
25 spending to claim as maintenance of effort and make necessary

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1 arrangements to allow reporting of that spending.

2 B. The following income sources are exempt from the
3 gross income test, the net income test and the cash payment
4 calculation:

5 (1) medicaid;
6 (2) food stamps;
7 (3) government-subsidized foster care payments
8 if the child for whom the payment is received is also excluded
9 from the benefit group;

10 (4) supplemental security income;

11 (5) government-subsidized housing or housing
12 payments;

13 (6) federally excluded income;

14 (7) educational payments made directly to an
15 educational institution;

16 (8) government-subsidized child care;

17 (9) earned income that belongs to a person
18 seventeen years of age or younger who is not the head of
19 household;

20 (10) child support passed through to the
21 participant by the child support enforcement division of the
22 department in the following amounts:

23 (a) fifty dollars (\$50.00) per month
24 through December 31, 2008; and

25 (b) no later than January 1, 2009, a

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1 minimum of one hundred dollars (\$100) for one child and two
2 hundred dollars (\$200) for two or more children as based on the
3 availability of state or federal funds;

4 (11) earned income deposited in an individual
5 development account by a member of the benefit group or money
6 received as matching funds for allowable uses by the owner of
7 the individual development account pursuant to the Individual
8 Development Account Act; and

9 (12) other income sources as determined by the
10 department.

11 C. The total countable gross earned and unearned
12 income of the benefit group cannot exceed eighty-five percent
13 of the federal poverty guidelines for the size of the benefit
14 group.

15 D. For a benefit group to be eligible to
16 participate:

17 (1) gross countable income that belongs to the
18 benefit group must not exceed eighty-five percent of the
19 federal poverty guidelines for the size of the benefit group;
20 and

21 (2) net countable income that belongs to the
22 benefit group must not equal or exceed the financial standard
23 of need after applying the disregards set out in Paragraphs (1)
24 through (4) of Subsection E of this section.

25 E. Subject to the availability of state and federal

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1 funds, the department shall determine the cash payment of the
2 benefit group by applying the following disregards to the
3 benefit group's earned income and then subtracting that amount
4 from the benefit group's financial standard of need:

5 (1) one hundred twenty-five dollars (\$125) of
6 monthly earned income and one-half of the remainder, or for a
7 two-parent family, two hundred twenty-five dollars (\$225) of
8 monthly earned income and one-half of the remainder for each
9 parent;

10 (2) monthly payments made for child care at a
11 maximum of two hundred dollars (\$200) for a child under two
12 years of age and at a maximum of one hundred seventy-five
13 dollars (\$175) for a child two years of age or older;

14 (3) costs of self-employment income; and

15 (4) business expenses.

16 F. In addition to the disregards specified in
17 Subsection E of this section, and between [~~the effective date~~
18 ~~of this 2007 act~~] June 28, 2007 and June 30, 2008, or until
19 implementation of the employment retention and advancement
20 bonus program described in Subsection G of this section, the
21 department shall apply the following income disregards to the
22 benefit group's earned income and then subtract that amount
23 from the benefit group's financial standard of need:

24 (1) for the first two years of receiving cash
25 assistance or services, if a participant works over the work

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1 requirement rate set by the department pursuant to the New
2 Mexico Works Act, one hundred percent of the income earned by
3 the participant beyond that rate; and

4 (2) for the first two years of receiving cash
5 assistance or services, for a two-parent benefit group in which
6 one parent works ~~over~~ more than thirty-five hours per week
7 and the other works ~~over~~ more than twenty-four hours per
8 week, one hundred percent of income earned by each participant
9 beyond the work requirement rate set by the department.

10 G. No later than July 1, 2008, New Mexico
11 employment incentives shall be as follows:

12 (1) the department shall implement an
13 employment retention and advancement bonus program based on
14 availability of state or federal funds that includes financial
15 incentives to encourage a participant to:

16 (a) leave the New Mexico works program
17 and move into an employment retention and advancement bonus
18 incentive program;

19 (b) maintain a minimum of thirty hours
20 per week employment; and

21 (c) leave the employment retention and
22 advancement bonus incentive program due to increased earnings
23 above the income eligibility standard and continue employment;

24 (2) the employment retention and advancement
25 bonus incentive program shall provide a cash bonus and

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1 employment services to a former participant who, upon
2 application:

3 (a) is currently engaged in paid work
4 for a minimum of thirty hours per week;

5 (b) has received cash assistance for at
6 least three months and one of the last three months;

7 (c) has had a gross income of less than
8 one hundred fifty percent of the federal poverty guidelines;
9 and

10 (d) has participated in the employment
11 retention and advancement bonus incentive program for no longer
12 than eighteen months;

13 (3) for continued eligibility in the
14 employment retention and advancement bonus incentive program, a
15 participant shall:

16 (a) be engaged in paid work for thirty
17 hours per week for at least one of the past three months;

18 (b) be engaged in paid work for thirty
19 hours per week for at least four of the past six months;

20 (c) have had gross income less than one
21 hundred fifty percent of the federal poverty guidelines; and

22 (d) have participated in the program no
23 more than eighteen months;

24 (4) the department shall provide employment
25 services to assist participants [~~to~~] in gaining access to

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1 available work supports, maintain employment and advance to
2 higher-paying employment; and

3 (5) the department shall:

4 (a) establish the amount of bonus to be
5 paid to participants in the employment retention and
6 advancement bonus program based on availability of state and
7 federal funds;

8 (b) propose rules to implement the
9 employment retention and advancement bonus incentive program of
10 this subsection no later than January 1, 2008; and

11 (c) begin implementation of the
12 employment retention and advancement bonus incentive program of
13 this subsection no later than July 1, 2008.

14 H. The department may recover overpayments of cash
15 assistance on a monthly basis not to exceed fifteen percent of
16 the financial standard of need applicable to the benefit group.

17 I. Based upon the availability of funds and in
18 accordance with the federal act, the secretary may establish a
19 separate temporary assistance for needy families cash
20 assistance program that may waive certain New Mexico Works Act
21 requirements due to a specific situation.

22 J. Subject to the availability of state and federal
23 funds, the department may limit the eligibility of benefit
24 groups that are eligible because a legal guardian is not
25 included in the benefit group."

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1 Section 4. Section 27-2D-1 NMSA 1978 (being Laws 2003,
2 Chapter 317, Section 1) is amended to read:

3 "27-2D-1. SHORT TITLE.--~~[This act]~~ Chapter 27, Article 2D
4 NMSA 1978 may be cited as the "Education Works Act"."

5 Section 5. Section 27-2D-2 NMSA 1978 (being Laws 2003,
6 Chapter 317, Section 2, as amended) is amended to read:

7 "27-2D-2. DEFINITIONS.--As used in the Education Works
8 Act:

9 A. "applicant" means a person applying for cash
10 assistance on behalf of a benefit group;

11 B. "benefit group" means a pregnant woman or a
12 group of people that includes a dependent child, all of that
13 dependent child's full, half, step- or adopted siblings living
14 with the dependent child's parent or relative within the fifth
15 degree of consanguinity and the parent with whom the children
16 live;

17 C. "cash assistance" means cash payments
18 distributed by the department pursuant to the Education Works
19 Act;

20 D. "department" means the human services
21 department;

22 E. "dependent child" means a natural, adopted step-
23 child or ward who is:

24 (1) seventeen years of age or younger;

25 (2) eighteen years of age and is enrolled in

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1 high school; or

2 (3) between eighteen and twenty-two years of
3 age and is receiving special education services regulated by
4 the public education department;

5 F. "director" means the director of the income
6 support division of the department;

7 G. "earned income" means cash or payment in kind
8 that is received as wages from employment or payment in lieu of
9 wages; and earnings from self-employment or earnings acquired
10 from the direct provision of services, goods or property,
11 production of goods, management of property or supervision of
12 services;

13 H. "education works program" means the cash
14 assistance, activities and services available to a recipient
15 pursuant to the Education Works Act;

16 I. "federal act" means the federal Social Security
17 Act and rules promulgated pursuant to the Social Security Act;

18 J. "federal poverty guidelines" means the level of
19 income defining poverty by family size published annually in
20 the federal register by the United States department of health
21 and human services;

22 K. "parent" means natural parent, adoptive parent
23 or stepparent [~~or legal guardian~~];

24 L. "person" means an individual;

25 M. "recipient" means a person who receives cash

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1 assistance or services or a member of a benefit group who has
2 reached the age of majority;

3 N. "secretary" means the secretary of human
4 services;

5 O. "services" means child-care assistance; payment
6 for education- or employment-related transportation costs; job
7 search assistance; employment counseling; employment, education
8 and job training placement; an annual payment for education-
9 related costs; case management; or other activities whose
10 purpose is to assist transition into employment;

11 P. "unearned income" means old age, survivors and
12 disability insurance; railroad retirement benefits; veterans
13 administration compensation or pension; military retirement;
14 pensions, annuities and retirement benefits; lodge or fraternal
15 benefits; shared shelter payments; settlement payments;
16 individual Indian money; child support; unemployment
17 compensation benefits; union benefits paid in cash; gifts and
18 contributions; and real property income; and

19 Q. "vehicle" means a conveyance for the
20 transporting of persons to or from employment or education for
21 the activities of daily living or for the transportation of
22 goods; "vehicle" does not include boats, trailers or mobile
23 homes used as a principal place of residence."

24 Section 6. Section 27-2D-5 NMSA 1978 (being Laws 2003,
25 Chapter 317, Section 5, as amended) is amended to read:

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1 "27-2D-5. FINANCIAL STANDARD OF NEED.--

2 A. The secretary shall adopt a financial standard
3 of need based upon the availability of state funds.

4 B. The following income sources are exempt from the
5 gross income test, the net income test and the cash payment
6 calculation:

7 (1) medicaid;

8 (2) food stamps;

9 (3) government-subsidized foster care payments
10 if the child for whom the payment is received is also excluded
11 from the benefit group;

12 (4) supplemental security income;

13 (5) government-subsidized housing or housing
14 payments;

15 (6) federally excluded income;

16 (7) educational payments made directly to an
17 educational institution;

18 (8) government-subsidized child care;

19 (9) earned income that belongs to a person
20 seventeen years of age or younger who is not the head of
21 household;

22 (10) child support passed through to the
23 participant by the child support enforcement division of the
24 department in the following amounts:

25 (a) fifty dollars (\$50.00) per month

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1 through December 31, 2008; and

2 (b) no later than January 1, 2009, a
3 minimum of one hundred dollars (\$100) for one child and two
4 hundred dollars (\$200) for two or more children as based on
5 availability of state and federal funds; and

6 (11) other income sources as determined by the
7 department.

8 C. The total countable gross earned and unearned
9 income of the benefit group shall not exceed eighty-five
10 percent of the federal poverty guidelines for the size of the
11 benefit group.

12 D. For a benefit group to be eligible to
13 participate:

14 (1) earned and unearned income that belongs to
15 the benefit group shall not exceed eighty-five percent of the
16 federal poverty guidelines for the size of the benefit group;
17 and

18 (2) earned and unearned income that belongs to
19 the benefit group shall not equal or exceed the financial
20 standard of need after applying the disregards set out in
21 Paragraphs (1) through (4) of Subsection E of this section.

22 E. Subject to the availability of state funds, the
23 department shall determine the cash payment of the benefit
24 group by applying the following disregards to the benefit
25 group's earned income and then subtracting that amount from the

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1 benefit group's financial standard of need:

2 (1) one hundred twenty-five dollars (\$125) of
3 monthly earned income and one-half of the remainder, or for a
4 two-parent family, two hundred twenty-five dollars (\$225) of
5 monthly earned income and one-half of the remainder for each
6 parent;

7 (2) monthly payments made for child care at a
8 maximum of two hundred dollars (\$200) for a child under two
9 years of age and a maximum of one hundred seventy-five dollars
10 (\$175) for a child two years of age or older;

11 (3) costs of self-employment income; and

12 (4) business expenses.

13 F. In addition to the disregards specified in
14 Subsection E of this section, and between [~~the effective date~~
15 ~~of this 2007 act~~] June 28, 2007 and June 30, 2008, or until
16 implementation of the employment retention and advancement
17 bonus program in the New Mexico Works Act, the department shall
18 apply the following income disregards to the benefit group's
19 earned income and then subtract that amount from the benefit
20 group's financial standard of need:

21 (1) for the first two years of receiving cash
22 assistance or services, if a participant works over the work
23 requirement rate set by the department pursuant to the New
24 Mexico Works Act, one hundred percent of the income earned by
25 the participant beyond that rate; and

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